DEFINITIONS

This chapter will deal with the statutes affecting the practice of land surveying and engineering; the State Board of Technical Registration; use of seals; and corporate practice.

The following statute, A.R.S. 32-101 pertains to the purpose of registration and the defintions relating to architecture, assaying, geology, landscape architecture, and land surveying:

§ 32-101. Purpose; definitions

A. The purpose of this chapter is to provide for the safety, health and welfare of the public through the promulgation and enforcement of standards of qualification for those individuals licensed and seeking licenses pursuant to this chapter.

B. In this chapter, unless the context otherwise requires:

1. "Architect" means a person who, by reason of his knowledge of the mathematical and physical sciences, and the principles of architecture and architectural engineering acquired by professional education and practical experience, is qualified to engage in the practice of architecture as attested by his registration as an architect.

2. "Architect-in-training" means a candidate for registration as a professional architect who is a graduate of a school approved by the board or who has five years or more of education or experience, or both, in architectural work which meets standards specified by the board in its rules. In addition, the candidate shall have passed the architect-in-training examination.

3. "Architectural practice" means any service or creative work requiring architectural education, training and experience, and the application of the mathematical and physical sciences and the principles of architecture and architectural engineering to such professional services or creative work as consultation, evaluation, design and review of construction for conformance with contract documents and design, in connection with any building, planning or site development. A person shall be deemed to practice or offer to practice architecture who in any manner represents himself to be an architect, or holds himself out as able to perform any architectural service or other services recognized by educational authorities as architecture.

4. "Assayer" means a person who analyzes metals, ores, minerals, or alloys in order to ascertain the quantity of gold or silver or any other

deemed to be practicing engineering for the purposes of this chapter if he engages in the practice of engineering exclusively for and as an employee of such employer and does not hold himself out and is not held out as available to perform any engineering services for persons other than his employer.

10. "Engineer-in-training" means a candidate for registration as a professional engineer who is a graduate in an approved engineering curriculum of four years or more of a school approved by the board or who has had four years or more of education or experience, or both, in engineering work which meets standards specified by the board in its rules. In addition, the candidate shall have passed the engineer-in-training examination.

11. "Geological practice" means any professional service or work requiring geological education, training, and experience, and the application of special knowledge of the earth sciences to such professional services as consultation, evaluation of mining properties, petroleum properties, and groundwater resources, professional supervision of exploration for mineral natural resources including metallic and nonmetallic ores, petroleum, and groundwater, and the geological phases of engineering investigations.

12. "Geologist" means a person, not of necessity an engineer, who by reason of his special knowledge of the earth sciences and the principles and methods of search for and appraisal of mineral or other natural resources acquired by professional education and practical experience is qualified to practice geology as attested by his registration as a professional geologist. A person employed on a full-time basis as a geologist by an employer engaged in the business of developing, mining or treating ores and other minerals shall not be deemed to be engaged in geological practice for the purposes of this chapter if he engages in geological practice exclusively for and as an employee of such employer and does not hold himself out and is not held out as available to perform any geological services for persons other than his employer.

13. "Geologist-in-training" means a candidate for registration as a professional geologist who is a graduate of a school approved by the board or who has had four years or more of education or experience, or both, in geological work which meets standards specified by the board in its rules. In addition, the candidate shall have passed the geologist-in-training examination.

14. "Landscape architect" means a person who, by reason of his professional education or practical experience, or both, is qualified to engage in the practice of landscape architecture as attested by his registration as a landscape architect.

15. "Landscape architect-in-training" means a candidate for registration as a professional landscape architect who is a graduate of a school

substance present in them. A person employed on a full-time basis as an assayer by an employer engaged in the business of developing, mining or treating ores or other minerals shall not be deemed to be engaged in assaying practice for the purposes of this chapter if he engages in assaying practice exclusively for and as an employee of such employer and does not hold himself out and is not held out as available to perform any assaying services for persons other than his employer.

5. "Assayer-in-training" means a candidate for registration as a professional assayer who is a graduate of a school and curriculum approved by the board or who has four years or more of education or experience, or both, in assaying work which meets standards specified by the board in its rules. In addition, the candidate shall have passed the assayer-in-training examination.

6. "Assaying practice" means any service or work requiring assaying education, training and experience and the application of special knowledge of the mineral sciences to such service or work as consultation and the evaluation of minerals. A person is deemed to practice or offer to practice assaying who in any manner represents himself to be an assayer or holds himself out as able to perform any assaying service or other services recognized by educational authorities as assaying.

7. "Board" means the state board of technical registration.

8. "Engineer" means a person who, by reason of special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience, is qualified to practice engineering as attested by his registration as a professional engineer.

9. "Engineering practice" means any professional service or creative work requiring engineering education, training and experience and the application of special knowledge of the mathematical, physical and engineering sciences to such professional services or creative work as consultation, research investigation, evaluation, planning, surveying as defined in paragraph 19, subdivisions (d) and (e), design, location, development, and review of construction for conformance with contract documents and design, in connection with any public or private utility, structure, building, machine, equipment, process, work or project. Such services and work include plans and designs relating to the location, development, mining and treatment of ore and other minerals. A person shall be deemed to be practicing or offering to practice engineering if he practices any branch of the profession of engineering, or by verbal claim, sign, advertisement, letterhead, card or any other manner represents himself to be a professional engineer, or holds himself out as able to perform or does perform any engineering service or other service or recognized by educational authorities as engineering. A person employed on a full-time basis as an engineer by an employer engaged in the business of developing, mining and treating ores and other minerals shall not be

approved by the board or who has had four years or more of education or experience, or both, in landscape architectural work which meets standards specified by the board in its rules. In addition, the candidate shall have passed the landscape architect-in-training examination.

16. "Landscape architectural practice" means the performance of professional services such as consultations, investigation, reconnaissance, research, planning, design, or responsible supervision in connection with the development of land and incidental water areas where, and to the extent that, the dominant purpose of such services is the preservation, enhancement or determination of proper land uses, natural land features, ground cover and planting, naturalistic and esthetic values, the settings and approaches to buildings, structures, facilities, or other improvements, natural drainage and the consideration and the determination of inherent problems of the land relating to erosion, wear and tear, light or other hazards. This practice shall include the location and arrangement of such tangible objects and features as are incidental and necessary to the purposes outlined in this paragraph, but shall not include the making of cadastral surveys or final land plats for official recording or approval, nor mandatorily include planning for governmental subdivisions.

17. "Land surveyor" means a person who by reason of his knowledge of the mathematical and physical sciences, principles of land surveying and evidence gathering acquired by professional education or practical experience, or both, is qualified to practice land surveying as attested by his registration as a land surveyor. A person employed on a full-time basis as a land surveyor by an employer engaged in the business of developing, mining or treating ores or other minerals shall not be deemed to be engaged in land surveying practice for purposes of this chapter if he engages in land surveying practice exclusively for and as an employee of such employer and does not hold himself out and is not held out as available to perform any land surveying services for persons other than his employer.

18. "Land surveyor-in-training" means a candidate for registration as a professional land surveyor who is a graduate of a school and curriculum approved by the board, or who has four years or more of education or experience, or both, in land surveying work which meets standards specified by the board in its rules. In addition, the candidate shall have passed the land surveyor-in-training examination.

19. "Land surveying practice" means the performance of one or more of the following:

(a) Measurement of land to determine the position of any monument or reference point which marks a property line, boundary or corner for the purpose of determining the area or description of the land.

(b) Location, relocation, establishment, reestablishment, setting, resetting or replacing of corner monuments or reference points which identify land boundaries, rights-of-way or easements.

(c) Platting or plotting of lands for the purpose of subdividing.

(d) Measurement by angles, distances and elevations of natural or man-made features in the air, on the surface and immediate subsurface of the earth, within underground workings and on the surface or within bodies of water for the purpose of determining or establishing their location, size, shape, topography, grades, contours or water surface and depths, and the preparation and perpetuation of field note records and maps depicting these features.

(e) Setting, resetting or replacing of points to guide the location of new construction.

Amended by Laws 1956, Ch. 161, § 1; Laws 1968, Ch. 92, § 1; Laws 1970, Ch. 88, § 1; Laws 1980, Ch. 250, § 2, eff. April 26, 1980; Laws 1982, Ch. 136, § 2, eff. April 16, 1982; Laws 1983, Ch. 28, § 1, eff. July 27, 1983, and § 2, eff. July 1, 1984.

Even though we are dealing exclusively with land surveying and engineering, it is recommended the reader study and understand all of the definitions included within A.R.S. 32-101 to become familiar with the limits of practice within each of the professions under jurisdiction of the State Board of Technical Registration.

Examination of the definition of "engineering practice" indicates that surveying as defined in paragraph 19, subdivisions (d) and (e) is included. Paragraph 19 is the definition of "land surveying practice". Subdivisions (d) and (e) refer to mine surveying, topographic surveys, photocontrol surveys, as builts, construction layout and other non boundary related surveying. Paragraphs (a), (b) and (c) refer to surveying of land boundaries, platting of land, replacing or retracing boundary corners, etc. It is clear from these definitions that engineers cannot practice any form of land surveying within the context of paragraph 19, subdivisions (a), (b) and (c).

The definition of "engineering practice" prior to July 1, 1984 was somewhat different. It did not exclude any part of surveying as the statute now does. It simply stated "surveying" was included within the definition of engineering practice. This is why engineers were allowed to "grandfather" into a land surveying certificate prior to the effective date of these new definitions (July 1, 1984).

There is one statute which if interpreted incorrectly can lead to disasterous results. A.R.S. 32-143 is shown below in its entirety:

§ 32-143. Exceptions

Registrants under this chapter may engage in practice in another category regulated pursuant to this chapter only to the extent that such person is qualified and as such work may be necessary and incidental to the work of his profession on a specific project.

Amended by Laws 1956, Ch. 161, § 14, eff. July 14, 1956; Laws 1970, Ch. 88, § 11.

It would appear from this statute that an engineer could practice land surveying or a land surveyor could practice engineering "only to the extent that such person is qualified and as such work may be necessary and incidental to the work of his profession on a specific project". To properly interpret this statute we must examine the case of State Board v. McDaniel, 84 Ariz. 223 (1958). In this particular case an engineer (McDaniel) was found guilty of misconduct for placing his seal on architectural plans.

"If the legislature had not intended the professions to be distinguishable, requiring separate registration for each, they would not have so provided.....The legislature recognized the overlapping of the professions and provided in section 32-143 for exceptions...This prevents an unqualified person's signing of plans in another field;...We now turn to the definitions of "architect" and "engineer" to see if they are so indefinite that a registrant (who somehow found them definite enough to recieve registration in his chosen field) cannot determine when he is practicing one or the other of the professions". (underlines added for emphasis).

The court established at least two things. One, the statute can apply where there is an overlapping of the professions; and second, where the definition of one's own profession is unclear whereby he cannot determine when he is practicing one or the other, then and only then does A.R.S. 32-143 apply.

There is no such uncertainty within the current defintions of engineering or land surveying. Other than within the context of paragraph 19, subdivisions (d) and (e), supra, an engineer cannot practice land surveying; and other than the fact that paragraph 19, subdivisions (d) and (e), supra, is also the practice of engineering, a land surveyor cannot practice engineering.

EXEMPTIONS AND LIMITATIONS

A.R.S. 32-144 discusses exemptions and limitations. It is shown on the next page:

§ 32-144. Exemptions and limitations

A. Architecture, engineering, geology, assaying, landscape architecture or land surveying may be practiced without compliance with the requirements of this chapter by:

1. An officer or employee of the United States, practicing as such.

2. An employee of a registrant or of a person exempt from registration, if such employment does not involve direct responsibility for design, inspection or supervision.

3. A nonregistrant who designs, alters or adds to a detached single family dwelling.

4. A nonregistrant who designs a one or two story building or structure in which the square footage of the floor area measured to the outside surface of the exterior walls does not exceed three thousand square feet and which is not intended for occupancy by more than twenty persons on a continuous basis and in which the maximum span of any structural member does not exceed twenty feet unless a greater span is achieved by the use of wood or steel roof or floor trusses or lintels approved by an engineer registered by the board.

5. A nonregistrant who designs additions or alterations to a one or two story building or structure subject to the limitations set forth in paragraph 4. A nonregistrant may exceed the maximum three thousand square foot limitation set forth in paragraph 4 for a one-time single addition not exceeding one thousand five hundred square feet as measured to the outside surface of the exterior walls designed for the purpose of storage of chattels.

6. A nonregistrant who designs a water or wastewater treatment plant, or extensions, additions, modifications or revisions, or extensions to water distribution or collection systems, if the total cost of such construction does not exceed twelve thousand five hundred dollars.

7. A nonregistrant who designs buildings or structures to be erected on property owned or leased by him or by a person, firm or corporation, including a utility, telephone, mining or railroad company, which employs such nonregistrant on a full-time basis, if the buildings or structures are intended solely for the use of the owner or lessee of the property, are not ordinarily occupied by more than twenty people, are not for sale to, rental to or use by the public and conform to the building code adopted by the city, town or county in which the building is to be erected or altered.

8. A nonregistrant who provides horticultural consultations or prepares planting plans for plant installations.

B. The requirements of this chapter shall not apply to work done by any communications common carrier or its affiliates or any public service corporation or manufacturing industry or by full-time employees of any of them, provided such work is in connection with or incidental to the products, systems or non-engineering services of such communications common carrier or its affiliates or public service corporation or manufacturing industry, and provided that the engineering service is not offered directly to the public.

Amended by Laws 1987, Ch. 317, § 6, eff. Aug. 18, 1987, retroactively effective to July 1, 1987.

For applicable retroactive effective date provision of Laws 1987, Ch. 317, see Historical Note preceding § 49-141.

A possible limitation on A.R.S. 32-144 is that the exemption provided by A.R.S. 32-144 from registration requirements does not apply when work is to be done on a public building or structure. Op.Atty.Gen. No. 182-064.

This does not necessiarly apply to land surveying, but may apply to certain branches of engineering, such as structural, mechanical or electrical engineering.

STATE BOARD OF TECHNICAL REGISTRATION

The State Board of Technical Registration (the Board) has authority over the professions defined under A.R.S. 32-101, supra. The Board has been given certain powers and authority pursuant to A.R.S. 32-106, as follows:

§ 32-106. Powers and duties

A. The board shall:

1. Adopt rules for the conduct of its meetings and performance of duties imposed upon it by law.

2. Adopt an official seal for attestation of certificates of registration and other official papers and documents.

3. Consider and pass upon applications for registration.

4. Conduct examinations for in-training and professional registration.

5. Hear and pass upon complaints or charges or direct a hearing officer to hear and pass on complaints and charges.

6. Compel attendance of witnesses, administer oaths and take testimony concerning all matters coming within its jurisdiction.

7. Keep a record of its proceedings.

8. Keep a register which shall show the date of each application for registration, the name of the applicant, the practice or branch of practice in which the applicant has applied for registration and the disposition of the application.

9. Do other things necessary to carry out the purposes of this chapter.

B. The board shall specify on the certificate of registration and renewal card issued to each registered engineer the branch of engineering in which he has demonstrated proficiency, and authorize him to use the title of registered professional engineer. The board shall decide what branches of engineering shall be thus recognized.

C. The board may hold membership in and be represented at national councils or organizations of proficiencies registered under this chapter and may pay the appropriate membership fees. The board may conduct standard examinations on behalf of national councils, and may establish fees for those examinations.

D. The board may employ and pay on a fee basis persons, including full time employees of a state institution, bureau or department, to prepare and grade examinations given to applicants for registration and to fix the fee to be paid for such services. Such employees are authorized to prepare, grade and monitor examinations and perform other services the board authorizes, and to receive payment therefor from the technical registration fund.

E. The board may rent necessary office space and pay the cost thereof from the technical registration fund.

F. The board may adopt rules and regulations establishing rules of professional conduct for registrants.

G. The board may require evidence it deems necessary to establish the continuing competency of registrants as a condition of renewal of licenses.

H. The board may employ persons as it deems necessary.

Amended by Laws 1956, Ch. 161, § 3; Laws 1970, Ch. 88, § 4; Laws 1970, Ch. 204, § 92; Laws 1980, Ch. 250, § 7, eff. April 26, 1980; Laws 1982, Ch. 136, § 4, eff. April 16, 1982.

Under paragraph F. of A.R.S. 32-106 the Board is given authority to adopt rules and regulations. These rules and regulations are published and distributed by the Board as "Rules of the State Board of Technical Registration for architects, assayers, engineers, geologists, landscape architects, and land surveyors". The current rules are not included herein as they are readily available from the Board. All registrants in each of the professions should obtain the current publication directly from the Board. It is each registrant's responsibility to know these rules and have the most current set of rules and regulations.

It is important to note that the Board only has authority over registrants. This is important since a non registrant practicing a profession controlled by the Board is not subject to disciplinary action by the Board. The Board, however, may report a practicing non registrant to the district attorney. It would be up to our legal system to charge a person with unlawful practice and prosecute them under penalty of law. The following statute outlines violations:

§ 32-145. Violations; classification

Any person who commits any of the following acts is guilty of a class 2 misdemeanor:

1. Practices, offers to practice or by any implication holds himself out as qualified to practice as an architect, assayer, engineer, geologist, landscape architect, or land surveyor, who is not registered as provided by this chapter.

2. Advertises or displays a card, sign or other device which may indicate to the public that he is an architect, assayer, engineer, geologist, landscape architect, or land surveyor, or is qualified to practice as such, who is not registered as provided by this chapter.

3. Assumes the title of engineer, architect, geologist, assayer, landscape architect, or land surveyor, or uses a certificate of registration of another, or uses an expired or revoked certificate of registration.

4. Presents false evidence to the board with the intent to obtain a certificate of registration.

5. Otherwise violating any provision of this chapter.

Amended by Laws 1956, Ch. 161, § 16, eff. July 14, 1956; Laws 1968, Ch. 92, § 10; Laws 1978, Ch. 201, § 529, eff. Oct. 1, 1978.

According to paragraph 5, it is noted that violation of any part of Chapter 1 is a class 2 misdemeanor. This includes a registrant practicing outside of their designated profession.

USE OF SEALS

A.R.S. 32-125 sets forth law to be complied with respect to "seals for registrants":

§ 32-125. Seals for registrants

A. The board shall adopt and prescribe seals for use of registrants who hold valid certificates. Each seal shall bear the name of the registrant, shall state the profession in which he is permitted to practice and, in the case of engineering, the branch or branches of engineering in which he has demonstrated proficiency, and other data the board deems pertinent.

B. Plans, specifications, plats or reports prepared by a registrant or his bona fide employee shall be issued under his seal.

C. It is unlawful for a registrant whose certificate has expired or has been revoked or suspended to use the seal, or for a registrant to sign, stamp or seal any document not prepared by him or his bona fide employee.

D. It is unlawful for any nonregistrant to cause or permit the illegal use of a registrant's seal, signature or stamp on any document prepared by the nonregistrant.

Amended by Laws 1956, Ch. 161, § 8, eff. July 14, 1956; Laws 1970, Ch. 88, § 8; Laws 1982, Ch. 136, § 10, eff. April 16, 1982.

With respect to the proper use of seals, the Board has set forth certain provisions to be complied with, within the "rules" of the Board.

Rule R4-30-301, paragraph 3 states:

"A registrant shall not knowingly sign, stamp or seal any plans, drawings, blueprints, land surveys, reports, specifications or other documents not prepared by the registrant or his bona fide employee."

Rule R4-30-304. Use of Seals, reads as follows:

"An imprint of the registrant's seal shall appear on each original sheet of drawings or maps or on one sheet of several master sheets used for reproduction into a single sheet of finished drawings or maps; on the original cover and index page of each set of specifications; on the original cover and index page of details bound in book form and prepared specifically to supplement project drawings or maps; and on the original cover and index page of reports and other professional documents prepared by a registrant or his bona fide employee. All such materials shall be sealed prior to submittal to the client, unless specifically marked as "Schematic-Not for Construction Use" and, in all cases, shall be sealed prior to submittal to any regulatory or review body. Superimposed over the imprint of the seal shall be the original signature of the registrant and the date when the seal imprint was signed."

Some important summations are:

1. Sign and seal only that work performed by you or by your bona fide employee.

2. If registered in more than one profession, use the appropiate seal for each profession practiced within any given project. This may require dual stamping for each discipline practiced on a given project.

3. Do not sign work that was not performed by you or your bona fide employee.

4. Do not misuse your seal!

CORPORATE PRACTICE

A.R.S. 32-141 clearly states the law with regards to engagement in the practice of architecture, assaying, geology, engineering, landscape architecture, or land surveying. It is shown as follows:

§ 32-141. Firm or corporate practice

A. No firm or corporation shall engage in the practice of architecture, assaying, geology, engineering, landscape architecture, or land surveying unless the work is under the full authority and responsible charge of a registrant, who is also a principal of the firm or officer of the corporation.

B. Firms or corporations shall identify responsible registrants. Each firm and corporation shall file with the board on a form prescribed by the board a list of responsible principals or officers, their registration certificate numbers and a description of the services the firm or corporation is offering to the public. The board shall be notified in writing on the prescribed form within thirty days of any change occurring in the list of principals or responsible corporate officers.

Amended by Laws 1956, Ch. 161, § 12, eff. July 14, 1956, Laws 1968, Ch. 92, § 7; Laws 1980, Ch. 250, § 17, eff. April 26, 1980; Laws 1982, Ch. 136, § 13, eff. April 16, 1982.

84 Ariz. 223

STATE BOARD OF TECHNICAL REGISTRATION, Appellants,

v.

Leonard F. McDANIEL, Appellee.

No. 6541.

Supreme Court of Arizona.

May 28, 1958.

Rehearing Denied June 10, 1958.

Prohibition proceeding to prevent the State Board of Technical Registration from continuing disciplinary proceedings against industrial engineer. The Superior Court of Maricopa County, Lorna E. Lockwood, J., issued the writ and the State Board of Technical Registration appealed. The Supreme Court, Udall, C. J., held that the statute governing disciplining of registered engineers sufficiently defines the rights, duties and privileges of registrants, and is not an objectionable delegation of legislative power.

Reversed with directions.

1. Prohibition ⇐3(3)

Statutory remedy by appeal from adverse determination of State Board of Technical Registration was not so plain, speedy and adequate as to preclude resort to prohibition by one denying jurisdiction of the board. A.R.S. §§ 12-901 et seq., 12-904 et seq., 12-913.

2. Prohibition ⇐3(5), 10(1)

Prohibition will lie if it fairly appears to trial court that in a given case, administrative agency is acting without or in excess of jurisdiction and appeal will not furnish a plain, speedy and adequate remedy at law.

3. Prohibition ⇐34

In reviewing a grant of prohibition, Supreme Court will not consider whether as an original proposition it would have granted such a writ, but restricts review to whether lower court abused its discretion.

4. Prohibition ⇐9

Allowance of prohibition against consideration of charges directed against registered industrial engineer by State Board of Technical Registration was not an abuse of discretion in view of important questions of constitutionality of statute, possibility of criminal prosecution, and other circumstances. A.R.S. §§ 12-901 et seq., 12-904 et seq., 12-913.

5. Statutes ⇐47

Though state is fully entitled to regulate trades and professions, it is not entitled to do so in statutes which are so ambiguous, indefinite and contradictory in terms as to make impossible their intelligent administration for benefit of public.

6. Licenses ⇐5

The legislature may establish reasonable standards to be complied with as a prerequisite to engaging in such professional pursuits as architecture and engineering, may properly adopt convenient and desirable expedient of providing for appointment of a board of qualified persons to enforce prescribed standards, and may confer jurisdiction upon such board to take disciplinary action.

7. Constitutional Law ⇐309(1)

Notice to parties against whom writ of prohibition is being prosecuted is essential to satisfy due process. A.R.S. §§ 12-124, subd. C, 32-106, subd. A, par. 1.

8. Prohibition ⇐22, 23

Notice to parties against whom writ of prohibition is being prosecuted is accomplished in modern American practice by issuance of rule to show cause or alternative writ of prohibition. A.R.S. §§ 12-124, subd. C, 32-106, subd. A, par. 1.

9. Prohibition ⇐26, 34

Good practice in prohibition proceeding would dictate that state file a responsive pleading, but irregularity in filing only a memorandum brief relying principally on contention that prohibition was improper remedy because of availability of appeal did not preclude state from offering defense on the merits in reviewing court, when appellee raised questions on the merits and trial court considered every phase of the case.

10. Licenses ⇐38

Charges in disciplinary proceeding against registered structural engineer that he had used his seal on plans other than structural engineering in violation of statute, and had been practicing architecture in violation of statute, were insufficient to confer jurisdiction on State Board of Technical Registration, where statutes referred to comprised merely a directive to the board concerning seals and a definition of architectural practice. A.R.S. §§ 32-101, subd. 2, 32-125, subd. A, 32-145.

11. Licenses ⇐38

That engineer's conduct in practicing architecture without a registration would constitute a misdemeanor would not preclude his answering to Board of Technical Registration in disciplinary proceedings on ground of professional misconduct as engineer. A.R.S. §§ 32-101, subd. 2, 32-125, subd. A, 32-145.

12. Administrative Law and Procedure ⇐312

Formal charges in an administrative disciplinary proceeding need not be stated with the technical niceties or formal exactness required of pleadings in a judicial proceeding, but should be sufficiently clear and complete to apprise the party of the acts charged for which he must answer.

13. Statutes ⇐47

Though statute is not invalid merely because it is difficult to interpret, it must be definite enough to serve as a guide to those upon whom it imposes a duty, and cannot leave to conjecture what is lawful or unlawful.

14. Licenses ⇐25

Statutes contemplate that engineer place his seal on engineering plans only, and architect place his seal on architectural plans only, and hence engineer is guilty of

professional misconduct in placing seal on architectural plans. A.R.S. §§ 32–121, 32–125, subd. B.

15. Constitutional Law ⇐48

Every legislative act is presumed to be constitutional and every intendment must be indulged in by courts in favor of validity of such acts.

16. Constitutional Law ⇐48

Court will not declare a legislative act unconstitutional unless satisfied beyond a reasonable doubt of its unconstitutionality.

17. Constitutional Law ⇐48

Legislation will not be stricken down as being unconstitutional if there can be found a legal basis for its validity, and act will be given a construction consistent with validity if possible.

18. Statutes ⇐206

Construction of a statute should be favored which will render every word operative rather than a construction which makes some words idle and nugatory.

19. Statutes ⇐206

Every part of a statute must be given meaning and effect if possible.

20. Constitutional Law ⇐62
Licenses ⇐7(1)

The statute governing disciplining of registered engineers sufficiently defines the rights, duties and privileges of registrants, and is not an objectionable delegation of legislative power. A.R.S. §§ 12-901 et seq., 32-101 et seq.

Robert Morrison, Atty. Gen., and Robert G. Mooreman, Sp. Asst. Atty. Gen., for appellants.

Lewis, Roca, Scoville & Beauchamp, Phoenix, by John P. Frank, Phoenix, for appellee.

UDALL, Chief Justice.

This is an appeal from an order and judgment of the trial court in favor of Leonard F. McDaniel, petitioner-appellee. Therein a writ of prohibition was directed to John C. Park, chairman and the other members of the State Board of Technical Registration who are the appellants here but were the respondents in the court below. Hereinafter we will refer to appellants as the Board and to McDaniel as appellee.

The events antecedent to the proceedings below are these: Appellee McDaniel is a registered structural engineer engaged in the practice of his profession in Maricopa County. The Board, apparently believing that appellee was not conducting himself properly, made some preliminary investigation and then initiated disciplinary action against him by the filing of formal charges of professional misconduct. These charges may be summarized as: misuse of his seal, practicing architecture, and aiding and abetting an unregistered person to evade the registration law. In preferring these charges the Board was proceeding under the provisions of the Technical Registration Act of 1935 which now appears as A.R.S. Title 32, Chap. 1, § 32–101 et seq., (hereinafter referred to as the Act).

A hearing on the charges was set by the Board for July 13, 1957, and notice thereof was served on appellee, wherein he was advised that his certificate as an engineer might be suspended or revoked "should such charges be substantiated." Prior to the date set for the hearing, the appellee filed an application for a writ of prohibition in the Superior Court of Maricopa County praying that the court prohibit the Board from considering the charges above mentioned. An order to show cause was issued and a hearing had thereon where the matters were briefed, orally argued, and taken under advisement. On July 8, 1957, the court entered the following order which forms the basis for the Board's appeal, viz.:

"The Court having fully considered the matter of the application for a Writ of Prohibition, finds that the charges one and two set forth in exhibit A of petitioner's application, be-

ing the charges made by the respondent, State Board of Technical Registration, do not constitute charges within the jurisdiction of said respondent upon which to base a hearing as set out therein.

"The Court further finds that as to charge No. 3, the statute on which the same is based is so ambiguous, indefinite and contradictory to the extent that, in the opinion of the Court, it is unconstitutional and also constitutes a possible delegation of legislative authority.

"It is ordered that the Writ of Prohibition issue as prayed."

[1, 2] The first assignment is that the superior court erred in issuing the writ of prohibition because the appellee was not entitled to this extraordinary writ since he had a plain, speedy and adequate remedy by appeal under the provisions of A.R.S., Title 12, Chap. 7, Art. 6, entitled "Judicial Review of Administrative Decisions." It was upon this legal theory that the Board principally relied in the lower court. Had appellee McDaniel submitted to the disciplinary hearing before the Board, unquestionably he could have had an adverse ruling first reviewed by the superior court (section 12-904 et seq.) and if it ruled against him then an appeal would lie to this court under section 12-913. Does it necessarily follow, as contended by appellants, that this statutory procedure for review is, *in all cases,* the *exclusive* and an *adequate remedy* for a registrant, such as appellee, who wishes to attack the jurisdiction and action of the Board? We think not. In the usual and ordinary situation—absent a jurisdictional question—such is the procedure that must be followed. We however cannot agree that prohibition will not lie if it fairly appears to the trial court that in a given case the administrative agency is acting without or in excess of its jurisdiction and that an appeal will not furnish a plain, speedy and adequate remedy at law. See, Westerlund v. Croaff, 68 Ariz. 36, 41, 42, 198 P.2d 842, for a full discussion of the relevant factors, with many authorities; 42 Am.Jur., Prohibition, section 9, as to test of adequacy.

[3, 4] This court, in reviewing a grant of the writ of prohibition by a lower court, will not consider whether as an original proposition it would have granted such a writ but restricts its review to whether the lower court abused its discretion. We perceive a number of factors tending to justify the action taken by the trial court in its finding that the remedy of appeal was not adequate: e. g. questions as to the constitutionality of portions of the Act relied upon; grave doubts as to the legal sufficiency of the charges made; that the same acts charged might involve appellee McDaniel in a criminal prosecution under the criminal sections of the statute (see, Adolph Coors Co. v. Liquor Control Commission, 99 Utah 246, 105 P.2d 181); the extreme burden placed upon appellee in connection with the broad requirements of a subpoena issued in the matter; lack of jurisdiction of the Board; and the fact that a criminal case involving similar constitutional questions had already been certified to this court. On the whole record we hold the trial court did not abuse its discretion in the issuance of the writ in the instant case.

[5] Generally speaking there can be no question as to the inherent power of the legislature to regulate professions such as engineering and architecture. As a matter of fact there are twenty-eight legally recognized and regulated professions and occupations in Arizona. See, A.R.S. Title 32. Such licensing laws are, without exception, based upon what is known as police power, inherent in state legislatures; that is, the power to enact any law deemed necessary for the protection of the property, peace, life, health and safety of the inhabitants of the state. See, McCawley, Professional Engineering Registration Laws (1954), page 587. However, while the State is fully entitled to regulate the

trades and professions, it is not entitled to do so in statutes which are "so ambiguous, indefinite, and contradictory in its terms as to make impossible its intelligent administration for the benefit of the public." See, State v. Gee, 73 Ariz. 47, 236 P.2d 1029, 1031.

[6] We agree with the Attorney General's abstract propositions of law to the effect that the legislature may (a) establish reasonable standards to be complied with as a prerequisite to engaging in such professional pursuits as architecture and engineering; (b) properly adopt the convenient and desirable expedient of providing for the appointment of a board of qualified persons to enforce prescribed standards; and (c), confer jurisdiction upon said board to take disciplinary action. Here the legislature has lawfully granted to such board the power to "Adopt by-laws and rules for the conduct of its meetings and the performance of duties imposed upon it by law." A.R.S. § 32-106, subd. A, par. 1. As to these basic principles there is virtually no disagreement. Our real problem, which stems from the disciplinary proceedings instituted before the Board, is whether the charges made against appellee are legally sufficient and if so whether the particular statutes on which they were predicated are constitutional.

Before getting down to the merits of the controversy, appellee raises the following proposition of law that should be considered, viz.:

> "Where the State in a lower court defends against a writ of prohibition exclusively on jurisdictional grounds, and makes no defense on the merits, it cannot for the first time offer a defense on the merits in this court."

[7-9] The Constitution of Arizona, Art. 6, section 6, provides, inter alia, that "Superior Courts and their judges shall have the power to issue writs of * * * prohibition * * *", and A.R.S. § 12-124, subd. C, merely states: "The superior court may issue writs of prohibition or other remedial writs necessary to carry out its powers." It should be noted that neither the statutes nor our rules prescribe the precise procedure to follow. Notice to the parties against whom the writ is being prosecuted is of course essential in order to satisfy due process. In the modern American practice this is accomplished either by the issuance of a rule to show cause, as was done here, or the issuance of an alternative writ of prohibition. 42 Am.Jur., Prohibition, section 43. However, good practice would dictate that a responsive pleading should have been filed by the State. This was not done. The only document filed was a "Memorandum (brief) in Denial of Writ of Prohibition" wherein the State's principal reliance was upon the legal principle that prohibition was not the proper remedy inasmuch as the right of appeal existed. In spite of this omission or irregularity we do not see that appellee was in anywise prejudiced. This for the reason that appellee McDaniel in his petition for the writ filed in the lower court specifically set forth a summary of the three charges made against him and urged as a matter of law that none of them were legally sufficient to give the Board jurisdiction to proceed against him in the disciplinary matter. The court's minutes reveal that at a hearing held on June 28, 1957, all parties were represented and the matter was fully argued and taken under advisement. When a ruling was made ten days later, the order (heretofore set forth haec verba) reflects the learned trial court considered every phase of the case that had been advanced by either of the parties. Inasmuch therefore as only questions of law were raised and determined below we hold the State is not prohibited from offering a defense on the merits in this court.

Appellee contended below, and the trial court agreed, that charges one and two did not constitute charges, within the jurisdiction of the Board, upon which a hearing could be based. These charges were as follows:

> "Comes Now, H. L. Royden and asserts under oath that Leonard F. Mc-

Daniel did violate the provisions of the code in the State Board of Technical Registration and is guilty of misconduct in the practice of his profession in that:

"1. The said Leonard F. McDaniel has been guilty of using his seal on plans other than Structural Engineering, in violation of Section 32-125 A.

"2. The said Leondard F. McDaniel has been guilty of practicing Architecture, in violation of Section 32-101 2."

The Board urges it had jurisdiction, under the express terms of the Act, to take disciplinary action as was attempted here. Further, the charges brought against appellee were valid *charges of misconduct*, and when taken in the light of the preliminary investigation (of which appellee was fully apprised) were sufficient to inform him of their subject matter and as such comprised adequate notice upon which to base a formal hearing.

[10] The Board further asserts the statutory references contained in the charges were merely to notify appellee of his violation of the disciplinary provisions of the code. The sections referred to as being violated are:

(1) "Section 32-125. *Seals for Registrants.*

"A. The board shall adopt and prescribe seals for use of registrants who hold valid certificates. Each seal shall bear the name of the registrant, shall state the vocation and, in the case of engineering, the branch or branches thereof he is permitted to practice, and other data the board deems pertinent."

(2) "Section 32-101. *Definitions.* (12 in all)

"In this chapter, unless the context otherwise requires:

* * * * * *

"2. 'Architectural practice' means * * *." (then follows a lengthy definition of the term set out haec verba, infra).

Neither of these sections (1) which is merely a directive to the board, and (2) a definition, could possibly be violated by appellee. Nor are they, as the Board contends, sufficient to apprise appellee of his purported misconduct.

[11] Appellee contends that if he is guilty of anything it may be his acts constitute a misdemeanor under section 32-145, that is, practicing architecture without being so registered. Assuming, without deciding, that this may be so, this would not preclude his answering to the Technical Registration Board on grounds of professional misconduct as a licensed engineer. Indeed the Board would be remiss in its duty if it did not investigate complaints made to it to see if such acts constituted professional misconduct sufficient upon which to predicate formal charges.

[12] The law is well settled that formal charges in an administrative disciplinary proceeding need not be stated with the technical niceties or formal exactness required of pleadings in a judicial proceeding. See, Botkin v. State Medical Board, Ohio Com.Pl.1950, 96 N.E.2d 215. However they should be sufficiently clear and complete to apprise the party to whom they are directed of the acts charged for which he must answer. If the Board would avoid the consequences of proceedings such as were instituted in the court below, the charges should be sufficient to establish that the Board is acting within its jurisdiction. We agree with the trial court, and so hold, that charges 1 and 2 do not constitute charges legally sufficient to confer jurisdiction on the Board upon which to predicate a formal disciplinary hearing under A.R.S. section 32-128, subd. B.

Lastly we consider the third charge which presents the most difficult problem. It reads:

3. "The said Leonard F. McDaniel has been guilty of aiding or abetting

an unregistered person to evade the provisions of this chapter, in violation of Section 32-128 A. 3."

This latter section, infra, was enacted in 1956 and added a new ground for revocation of a certificate.

A. "The board may take disciplinary action against the holder of a certificate under this chapter, charged with the commission of any of the following acts:

* * * * * *

3. "Aiding or abetting an unregistered person to evade the provisions of this chapter or knowingly combining or conspiring with an unregistered person, or allowing one's registration to be used by an unregistered person or acting as agent, partner, associate or otherwise, of an unregistered person with intent to evade provisions of this chapter."

Section 32-128, subd. A, par. 3, supra, is indefinite only insofar as it depends on the phrase "provisions of this chapter" for its meaning. The terms *aid* or *abet* and *evade* pose no real difficulty in interpretation. The real problem is: are the other sections of the Act, upon which this section depends for enforcement, capable of interpretation?

[13] We have held that a statute is not invalid merely because it is difficult to interpret. However it must be definite enough to serve as a guide to those upon whom it imposes a duty. Hernandez v. Frohmiller, 68 Ariz. 242, 204 P.2d 854; Southwest Engineering Co. v. Ernst, 79 Ariz. 403, 291 P.2d 764. The statute cannot leave to conjecture that which is lawful or unlawful. State v. Walgreen Drug Co., 57 Ariz. 308, 113 P.2d 650.

Appellee urges this Act, regulating architects and engineers with similar definitions of each, does not give him a comprehensible notion of what he may or may not lawfully do in his profession. He uses the example that he is not sure whether if he hired an architect to draw architectural plans, and he, as a structural engineer, placed his seal thereon, he would be guilty of violating the Act and of aiding and abetting another to evade it.

[14] It appears to us the plain import of the entire Act is that an engineer place his seal on engineering plans, and an architect place his seal on architectural plans. While the two professions are in some respects similar, they are distinguishable professions, each dependent on similar but quite distinct principles. A.R.S. § 32-121, states:

"A person desiring to practice the profession of architecture, assaying, engineering, geology, or land surveying shall first secure a certificate of registration and shall comply with all the conditions prescribed in this chapter."

A.R.S. § 32-125, subd. B, reads:

"Plans, specifications, plats or reports prepared by a registrant or his bona fide employee, shall be issued under his seal."

If the legislature had not intended the professions to be distinguishable, requiring separate registration for each, they would not have so provided. The legislature needs to spell out its directives so persons governed thereby may set the course they will follow but it need not take such persons by the hand and guide them along an obvious pathway.

The legislature recognized the overlapping of the professions and provided in section 32-143 for exceptions. Therein they state:

"* * * a registered engineer may engage in the practice of architecture, * * *, but only to the *extent that such person is qualified* and as such work may be necessary and incidental to the work of his profession."

(Emphasis supplied.)

This prevents an unqualified person's signing of plans in another field; i. e., engineers placing their seal on architectural plans.

We now turn to the definitions of "architect" and "engineer" to see if they are so indefinite that a registrant (who somehow found them definite enough to receive registration in his chosen field) cannot determine when he is practicing one or the other of the professions.

A history of the development of the law regulating architecture and engineering in Arizona is revealing. An Act was first passed by the legislature in 1921. S.L. 1921, Ch. 135. Therein registration was open to one who "submits evidence satisfactory to the board that he is fully qualified to practice architecture, engineering or * * *." The terms were not defined. In R.C.A.1928, Ch. 58, engineer was defined and it was expressly provided (thereafter deleted) that a registered engineer could practice architecture and vice versa. In 1935 the section was amended and the definitions first appeared. S.L. 1935, Ch. 32, appearing in A.C.A.1939 as section 67-1802. The definition of engineer was slightly changed by S.L.1952, Ch. 144, and we are presently concerned with the definitions and the entire Act as set forth in A.R.S. §§ 32-101 to 32-145 inclusive. The terms of the Act have been sufficient to allow its adequate administration for over three decades without any prior appeal to this court.

The definitions of engineering and architecture are very similar. We will examine the problem thereby created by comparing our statute on architects and architectural practice with those of Michigan. In the well-reasoned case of People v. Babcock, 1955, 343 Mich. 671, 73 N.W.2d 521, 523, a registered professional engineer was convicted of unlawfully using a title tending to convey the impression that he was an architect, although not registered as such. On appeal he urged the Act was unconstitutional because:

> "It is so vague and indefinite that to convict a defendant under this Act would be a denial of due process of law * * *.
>
> "That said Act attempts to delegate legislative authority to an administrative agency without providing any yardstick for the exercise of its authority contrary to the due process clause of the 14th Amendment * * *."

These same grounds are urged here and we set forth a comparison of the definitions of architecture in the Michigan and Arizona statutes:

Arizona

"'Architect' means a person who,

by reason of his knowledge of the mathematical and physical sciences, and the principles of architecture and architectural engineering,

acquired by professional education, practical experience, or both, is qualified to engage in the practice of architecture

as attested by his registration as an architect.

"'Architectural practice' means

any service or creative work requiring architectural education, training and experience, and the application of the mathematical and physical sciences and the principles of architecture and architectural engineering to such professional services or creative work as

consultation, evaluation, planning, design and supervision of construction

for the purpose of assuring compliance with specifications and design, in connection with any building, or site development.

A person shall be deemed to practice or offer to practice architecture who in any manner represents himself to be an architect, or holds himself out as able to perform any architectural service or other services recognized by educational authorities as architecture."

Michigan

"The term 'architect' as used in this act shall mean a person who,

by reason of his knowledge of mathematics, the physical sciences, and the principles of architectural design,

acquired by professional education and practical experience is qualified to engage in architectural practice

as hereinafter defined.

"The practice of architecture within the meaning and intent of this act includes

any professional service such as

consultation, investigation, evaluation, planning, design, or responsible supervision of construction, alteration or repair in connection with any public or private structures, buildings, equipment, works or projects wherein the public welfare or the safeguarding of life, health, or property is concerned or involved,

when such professional service requires the application of the principles of architecture or architectural design. * * *."

The above definitions are quoted from A.R.S. § 32-101, subds. 1 and 2, and from pages 523 and 524 of 73 N.W.2d of People v. Babcock, supra, quoting Michigan Stat.Ann.1953 Cum.Supp. section 18-84(2), Comp.Laws 1948 and Comp.Laws Supp. 1954, § 338.552. Section 18-84(2), supra, goes on to define professional engineer and land surveyor, as does the Arizona Act. The definitions of engineer and engineering practice are also similar.

The Michigan court then examined the section dealing with the qualifications of an applicant, Comp.Laws 1948, § 338.562 (similar to Arizona's and including the phrase "experience satisfactory to the board"). In examining the entire Act the court concluded, 73 N.W.2d at page 526, in affirming the judgment of conviction that:

> "While it is a fact that the definitions of architects and engineers are somewhat similar, yet there is a distinction. The services of an architect requires the application of the principles of architecture or architectural design, while the services of an engineer requires the application of engineering principles."

Other states regulating architects and engineers in the same Act, with similar definitions as are contained in our Act, are: Missouri, V.A.M.S. § 327.020; Wisconsin, W.S.A. 101.31(2); Minnesota, Minnesota Statutes Annotated, § 326.02, subds. 2 and 3; Nebraska, Revised Statutes of Nebraska 1943, Reissue of 1950, § 81-840. There are two states whose definitions, combined in the same Act, are less comprehensive than ours: Virginia, Code of Virginia, § 54-17 "Definitions"—"(1) *'Architect'* shall be deemed to cover an architect or an architectural engineer." In Clark v. Moore, 1955, 196 Va. 878, 86 S.E.2d 37 the court used the definition of civil engineering (not defined in their Act) as found in the Encyclopedia Americana, Vol. 6, P. 731. Tennessee regulates the two professions in the same Act without a definition of either. Tennessee Code Annotated, § 62-201 et seq. Other states also regulate the two professions in one Act.

[15-17] The law is well settled in this jurisdiction that every legislative Act is presumed to be constitutional and every intendment must be indulged in by courts in favor of validity of such Acts. Giss v. Jordan, 82 Ariz. 152, 309 P.2d 779; Hudson v. Kelly, 76 Ariz. 255, 263 P.2d 362. The court will not declare a legislative Act unconstitutional unless satisfied beyond a reasonable doubt of its unconstitutionality. State v. Gastelum, 75 Ariz. 271, 255 P.2d 203. Legislation will not be stricken down as being unconstitutional if there can be found a legal basis for its validity, Hernandez v. Frohmiller, supra, and the Act will be given a construction consistent with validity if at all possible. Earhart v. Frohmiller, 65 Ariz. 221, 178 P.2d 436.

[18, 19] It is equally well settled that construction of a statute should be favored which will render every word operative rather than a construction which makes some words idle and nugatory. Powers v. Isley, 66 Ariz. 94, 183 P.2d 880; Hill v. County of Gila, 56 Ariz. 317, 107 P.2d 377. Every part of a statute must be given meaning and effect if it is possible to do so. State v. Dickens, 66 Ariz. 86, 183 P.2d 148.

[20] It may well be that this Act could be better drawn and its meaning thereby made clearer. However, an examination of the Act discloses that the rights, duties and privileges of registrants and the Board are sufficiently defined. The leaving of details of operation and administration (to the Board), within the standards set forth by the legislature is not an objectionable delegation of legislative power. See, State v. Marana Plantations, 75 Ariz. 111, at page 114, 252 P.2d 87; Waier v. State Bd. of Registration, 303 Mich. 360, 6 N.W.2d 545. Contra, Krebs v. Thompson, 387 Ill. 471, 56 N.E.2d 761, and Prouty v. Heron, 127 Colo. 168, 255 P.2d 755. These last

two cases, so strongly relied on by appellee, are distinguished in and not followed by the well-reasoned decision of our sister state in Hatfield v. New Mexico State Board of Reg., 60 N.M. 242, 290 P.2d 1077.

We hold that the third charge was a valid one, hence the trial court erred in prohibiting a hearing thereon. The judgment of the lower court is reversed with instructions to quash its writ of prohibition and to dismiss appellee's petition.

Judgment reversed with directions.

WINDES, PHELPS, STRUCKMEYER and JOHNSON, JJ., concur.